

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION: 6

HON. THOMAS B. LINDBERG

CASE NO. P1300CR20081339

JEANNE HICKS, CLERK

By: Rachel Roehe, Deputy Clerk

DATE: April 8, 2010

**FILED**

DATE: April 8, 2010

3:27 O'Clock P.M.

JEANNE HICKS, CLERK

BY: Rachel Roehe

Deputy

TITLE:

STATE OF ARIZONA

(Plaintiff)

vs.

STEVEN CARROLL DEMOCKER

(D-1)

COUNSEL:

Yavapai County Attorney (e)

(For Plaintiff)

John Sears (e)

Larry Hammond & Anne Chapman (e)

OSBORN MALEDON, P.A.

(For Defendant)

HEARING ON:

Pending Motions

NATURE OF PROCEEDINGS

COURT REPORTER

Roxanne Tarn

START TIME: 1:31 p.m.

**APPEARANCES:** Joseph Butner, Deputy County Attorney  
Jeff Paupore, Deputy County Attorney  
Steven DeMocker, Defendant  
John Sears, Counsel for Defendant  
Larry Hammond, Counsel for Defendant  
Anne Chapman, Counsel for Defendant  
John Napper, Counsel for Renee Girard  
Renee Girard, Witness  
Christopher DuPont, Counsel for the Victim (Katherine DeMocker) (telephonic)  
Katherine DeMocker, Victim (telephonic)

This is the time set for the hearing on pending motions.

Counsel argue the motion for a Certificate of Attendance with regard to Katherine DeMocker.

The Court **ORDERS** that it will allow Counsel for Katherine DeMocker to respond to the motion so that the response is received by this Division no later than Monday, April 12, 2010, at 5:00 p.m. A faxed or emailed copy may be sent directly to this Division by that time. The original response shall be sent by mail for filing. Counsel for Katherine DeMocker shall inform the Court if he is not going to file a response. The State is authorized to file a memorandum.

The Court takes the matter of the Certificate of Attendance under advisement.

At 1:48 p.m., Katherine DeMocker and her Counsel are excused from the remainder of this hearing.

Counsel argue the Motion for Use Immunity with regard to Renee Girard.

The Court addresses Renee Girard.

The prosecution, having applied to the Court for use immunity on behalf of Renee Girard, and as authorized in A.R.S. § 13-4064, the Court **ORDERS**, after having read the motion and good cause appearing, that Renee Girard has use immunity to testify at trial in the case against Steven Carroll DeMocker, P1300CR20081339.

April 8, 2010

Motions Hearing

Page 2

Renee Girard will be required to testify at trial in the case. Any information directly or indirectly derived from Renee Girard's testimony cannot be used against her in any proceeding or prosecution for any crime or offense concerning which she gave answer or produced evidence under the Court order. Renee Girard must recognize that she could be subjected to prosecution, penalty or forfeiture for any perjury, false swearing or contempt committed in the answering or failing to answer, or in producing or failing to produce evidence in accordance with the order of the Court. Renee Girard states that she understands the meaning of the Court's order. The Court concludes that the testimony is necessary and indispensable and Ms. Girard would otherwise possibly refuse to testify and would be likely to invoke her Fifth Amendment rights. The Court signs the order this date. The Court finds and **ORDERS** that to the extent that Ms. Girard is participating in pretrial interviews conducted by the Prosecution and/or the Defense, that she is covered by the same immunity.

Court and Counsel discuss the trial exhibits to be used in this matter.

The Court confirms that the deadline for the State to file exhibits is April 19, 2010, and the deadline for the Defense to file exhibits is April 26, 2010. The Court requests that the State provide copies of their exhibits to the Defense within a couple of days of filing. The Court also requests that the State provide a status of the exhibits to the Defense on the Wednesday and Friday after the State files their exhibits.

Court and Counsel hold further discussion with regard to the trial exhibits.

The Court states that it excused the juror, Mr. Cartilage, as was previously discussed. The Court has received and provided to each side a copy of additional information obtained through the Jury Commissioner's Office referencing Jurors numbered 264702, 253184 and 258935.

Discussion takes place regarding those numbered Jurors.

There being no objection, the Jury Commissioner is authorized to excuse the following Jurors: Steve Marshall, Earl Bauer, and John Roush (Jurors numbered 264702, 253184 and 258935).

Discussion takes place with regard to the computer system for the Defendant and the attorneys at the jail.

Counsel for the State informs the Court that it has received notice that the system was working earlier today.

The Court requests that the State's attorneys see if they can do something about how the Defendant is secured in the room when using the computer system.

Discussion takes place with regard to privacy and confidentiality concerns with the Defendant is in the room using the computer system.

The Court requests that the State's attorneys check out the issues of the camera and the intercom system with regard to when the Defendant uses the computer system and has conversations with his attorneys.

Discussion takes place with regard to scheduling issues.

Hearing on pending motions is set for **April 13, 2010, at 11:00 a.m.** in Division 6.

The Cooper Motions filed by the Defense on March 10 are addressed.  
Counsel present argument.

The Court finds that the danger of unfair prejudice outweighs the probative value that can be given by Mr. Cooper or any other purported expert in this area. For Rule 702 grounds and Rule 403 grounds, the Court excludes the testimony and the motion is **GRANTED**.

April 8, 2010

Motions Hearing

Page 3

**Under advisement ruling regarding pending motions:**

The Court states that it believes that there have been some 15.1 violations inclusive of not identifying the purported identity of shoeprint testimony to possibly or probably La Sportiva type shoes back when that was learned in October, and then it was disclosed after it was found to have some potential connection to the Defendant. The Court states that there are other issues that the Court has looked at on an individual basis with the individual motions, responses and replies that the parties have filed. The Court has reached a general conclusion that there was a violation of the discovery rules for some of those items. The Court has come to a conclusion that striking the death penalty would not be proper and preclusion of evidence or testimony by a particular witness is not proper. The Court does not believe that a sanction is appropriate with regard to the obtaining of the bank information. The Court believes that sufficient diligence was used with regard to obtaining even the more recently discovered bank accounts. The Court believes that sanctions are appropriate with regard to what the Court has mentioned, inclusive of the large amount of emails. The Court is not persuaded that the UBS emails relating to the back and forth that preceded the divorce are relevant or very probative on the issues of this case which has to do with something that occurred a couple of months after the divorce decree was issued or agreed upon. To the extent that there is financial information contained in there that the expert for either side may rely upon, if that is contested in some fashion, the Court may allow those to be used for impeachment purposes. In terms of substantively admitting those, the Court does not see that it adds anything, and therefore is more subject to sanction by preclusion than other information may be. Similarly, the State urged that the Barbara Onan back and forth to reportedly corroborate Ms. Onan's testimony that she provided in the last couple of weeks. To the extent that it is simply corroboration, it is cumulative and not that necessary to the State's case. Since there was late, and without due diligence disclosure of those, the Court is not of a mind to change its mind about precluding those. In terms of communication between the Defendant and Ms. Kennedy within the 72 hours in advance of her death, the Court believes that those are more probative and less subject to sanction even with the delayed discovery and those may be allowed by the Court.

Communications after the fact that reflect that the Defendant uses his cell phone, the Court does not believe are particularly relevant unless there is a necessary impeachment of a witness concerning that. The Court reserves the right to modify an order of preclusion with regard to those if there is an impeachment issue. Generally speaking, the Court does not see that as needful testimony and the Court would find it to be cumulative and, therefore, the information is more subject to preclusion as a sanction for that reason, having considered the importance to the respective cases. With regard to communications to someone named Jennifer, which the Court believes was number 196 or 197, it does not seem particularly probative of anything, and the Court would preclude that for late disclosure purposes. In general speaking of particular items, the Court believes that there are some things that are probative and the Court is not going to preclude, but most of that information comes under the same rubric that the Court adopted about it being late disclosed and subject to sanction. The Court does not believe that a continuance is appropriate under these circumstances.

The Court finds that there has been a violation of the letter and the spirit of Rule 15. The Court does not believe that striking the death penalty entirely is appropriate. The Court has determined that other than the exclusion of the large number of UBS records and emails, the Court believes it is appropriate to strike two of the three remaining aggravating factors. This is the Court's sanction that it will employ in the case. That will leave the State with aggravating factor F5, the pecuniary aggravating factor in the case.

The Court clarifies that the shoeprint evidence is not precluded.

**END TIME: 3:27 p.m.**

cc: VS (e)  
Jury Commissioner (re: excused jurors)  
Dean Trebesch (Contract Administrator) (PD) (e)  
Division 6 (calendar)  
YCSO (e)  
John Napper, Counsel for Renee Girard (e)  
Christopher DuPont, Trautman DuPont PLC, 245 W Roosevelt, Ste. A Phoenix, AZ 85003,  
Counsel for Victims Charlotte and Katherine DeMocker